

Assembly Bill No. 1268

CHAPTER 532

An act to amend Sections 110, 1210, 1211, 1212, 1501.2, 1583, 14250, 14313, and 14315 of, to add Sections 220, 221, 222, 223, 230.5, 236, 250.5, 291, 292, 292.5, 352, 353, 354, 355, 356, 357, 511, 770, 1339, 3828, and 14212 to, to add Article 7 (commencing with Section 295), Article 8 (commencing with Section 305), and Article 9 (commencing with Section 335) to Chapter 2 of Division 1 of, to repeal Sections 100, 101, 107.5, 116, 117, 118, 684, 1910, 1911, 1911.5, 1912, 1913, 1913.5, 1951, and 1952 of, to repeal Chapter 17 (commencing with Section 3100) of Division 1 of, and to repeal Chapter 11 (commencing with Section 31700) of Division 15 of, the Financial Code, relating to financial institutions.

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Secretary of State September 29, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1268, Gaines. Financial institutions.

Existing law provides for the regulation and licensure by the Commissioner of Financial Institutions of state-chartered banks and credit unions, money transmitters, persons engaged in the business of issuing travelers checks, business and industrial development corporations, and corporations engaging in the business of selling, in this state, payment instruments issued by it. Each of the laws regulating these licensees establishes various enforcement provisions for violations of those laws.

This bill would repeal specified portions of those enforcement provisions. The bill would recast, in one body of law, the enforcement provisions applicable to those licensees and would also recast various other provisions applicable to those licensees. The bill would recast provisions establishing the Deputy Commissioner of Financial Institutions for the Division of Credit Unions. The bill would recast provisions making it a crime for the deputy commissioner to fail to report to the commissioner information regarding the insolvency or unsafe condition of a licensee, if the deputy commissioner has knowledge of those facts. The bill would make other related changes, and would make other changes related to bank and trust company depositaries and stock acquisitions.

Existing law authorizes the commissioner to examine the books, accounts, records, files, and any office of a credit union. Existing law authorizes the commissioner to take possession of the property and business of a credit union if the commissioner finds, among other things, that the credit union has inadequate capital or is insolvent.

This bill would require the officers and employees of a credit union to exhibit the securities, books, records, and accounts to the examiners, on

request. The bill would authorize the commissioner to take possession of the property and business of the credit union if the commissioner finds that the credit union has inadequate net worth, as defined, or is insolvent. The bill would also authorize the commissioner to call a meeting of the board of directors of a credit union, as specified.

Existing law prohibits a corporation from engaging in the trust business unless it complies with specified requirements. Existing law exempts from those requirements, among others, certain persons or corporations acting as a trustee or any person appointed as a receiver, trustee, or other fiduciary by the court.

This bill would exempt professional fiduciaries from those requirements.

The people of the State of California do enact as follows:

SECTION 1. Section 100 of the Financial Code is repealed.

SEC. 2. Section 101 of the Financial Code is repealed.

SEC. 3. Section 107.5 of the Financial Code is repealed.

SEC. 4. Section 110 of the Financial Code is amended to read:

110. "Office" includes head office, branch office, and any other authorized place of business of a licensee.

"Head office" means the principal place of business of a licensee.

SEC. 5. Section 116 of the Financial Code is repealed.

SEC. 6. Section 117 of the Financial Code is repealed.

SEC. 7. Section 118 of the Financial Code is repealed.

SEC. 8. Section 220 is added to the Financial Code, to read:

220. The powers of supervision and examination of all licensees are vested in the commissioner.

SEC. 9. Section 221 is added to the Financial Code, to read:

221. The commissioner may promulgate or waive such rules and regulations as may be reasonable or necessary to carry out his or her duties and responsibilities.

SEC. 10. Section 222 is added to the Financial Code, to read:

222. (a) The commissioner, whenever in his or her opinion such action is necessary or appropriate to carry out his or her duties, may call a meeting of the board of directors of a licensee.

(b) A meeting of the board of a licensee called by the commissioner shall be held upon four days' notice by first class mail or 24 hours' notice delivered personally or by telephone. The notice shall be given by the commissioner or, if the commissioner so orders, by an officer of the licensee.

(c) A meeting of the board of a licensee called by the commissioner shall be held at a place within this state as may be designated by the commissioner and specified in the notice of the meeting.

(d) The expenses of a meeting of the board of a licensee called by the commissioner shall be paid by the licensee.

SEC. 11. Section 223 is added to the Financial Code, to read:

223. The commissioner may, at any time, require a licensee to write down any asset held by the licensee to a valuation that will represent the asset's then fair market value.

SEC. 12. Section 230.5 is added to the Financial Code, to read:

230.5. The Chief Officer of the Division of Credit Unions is the Deputy Commissioner of Financial Institutions for the Division of Credit Unions. The Deputy Commissioner of Financial Institutions for the Division of Credit Unions shall administer the laws of this state relating to credit unions or the credit union business under the direction of the commissioner. The Deputy Commissioner of Financial Institutions for the Division of Credit Unions shall be appointed by the Governor and shall hold office at the pleasure of the Governor. The Deputy Commissioner of Financial Institutions shall receive an annual salary as fixed by the Governor.

SEC. 13. Section 236 is added to the Financial Code, to read:

236. If a deputy commissioner or any examiner has knowledge of the insolvency or unsafe condition of any licensee and willfully fails to report that fact to the commissioner in writing, he or she is guilty of a felony.

SEC. 14. Section 250.5 is added to the Financial Code, to read:

250.5. There is in the Department of Financial Institutions, the Division of Credit Unions. The Division of Credit Unions has charge of the execution of the laws of this state relating to credit unions and to the credit union business.

SEC. 15. Section 291 is added to the Financial Code, to read:

291. Any debt due a licensee on which interest is past due and unpaid for the period of one year shall be charged off, unless the debt is well secured or is in process of collection.

SEC. 16. Section 292 is added to the Financial Code, to read:

292. Any person that provides services to any licensee, at the request of the commissioner, shall submit to an examination by the commissioner. Should the commissioner deem it necessary or desirable that an examination be made of a person, the examination shall be made at the expense of the person examined. If the person refuses to permit an examination to be made, the commissioner may order every licensee receiving services from that person to discontinue receiving those services or otherwise conducting business with that person, and the licensees shall comply with that order.

SEC. 17. Section 292.5 is added to the Financial Code, to read:

292.5. (a) All references in this code and the Corporations Code to financial statements, balance sheets, income statements, and statements of changes in financial position of a licensee, and all references to assets, liabilities, earnings, retained earnings, shareholders' equity, net worth, and similar accounting items of a licensee, mean those financial statements or those items prepared or determined in conformity with generally accepted accounting principles then applicable in the United States, fairly presenting in conformity with generally accepted accounting principles accepted in the United States the matters which they purport to present, subject to any specific accounting treatment required by any applicable provision of the

Corporations Code, this code, or any regulation, order issued by the commissioner, or agreement entered into by the commissioner and a licensee.

(b) The commissioner may, by regulation or order, require that any financial statement or accounting item of a licensee be prepared or determined in a manner other than in conformity with generally accepted accounting principles accepted in the United States if the commissioner finds that such other manner is necessary or appropriate to carry out the purposes or provisions of this code.

SEC. 18. Article 7 (commencing with Section 295) is added to Chapter 2 of Division 1 of the Financial Code, to read:

Article 7. Enforcement

295. In this article:

(a) “Appropriate licensee business” means the business that a licensee may conduct in accordance with the charter or license that the commissioner has issued to that licensee.

(b) “Customer” means a depositor of a bank, a member of a credit union, or a customer of any other licensee.

(c) “Holding company” shall have the meaning set forth in Section 3700.

(d) “Officer of a subject institution” means any director, officer, official, or employee of the subject institution.

(e) “Person” means a subject institution or a subject person.

(f) “Subject institution” means any of the following:

(1) Licensee.

(2) Subsidiary of a licensee.

(3) Foreign (other state) or foreign (other nation) bank or credit union that maintains an office in this state, with respect to any such office other than a national bank or federal credit union.

(4) Any other person lawfully conducting the business of a bank or credit union in this state other than a national bank or federal credit union.

(g) “Subject person,” when used with respect to a subject institution, means any of the following:

(1) Director, officer, employee, or agent of the subject institution.

(2) Member, consultant, joint venture partner, or other person that participates in the affairs of a subject institution.

(3) Independent contractor, including any attorney, appraiser, or accountant, who knowingly or recklessly participates in any of the following acts if the act caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the subject institution:

(A) A violation of any applicable law, regulation, or order.

(B) A breach of fiduciary duty.

(C) An unsafe or unsound act.

(h) “Violation” includes any act performed, alone or with other persons, for or toward causing, bringing about, participating in, counseling, aiding, or abetting a violation of any applicable statute, regulation, provision of a

written order issued by the commissioner, or provision of a written agreement made between the commissioner and a subject institution or subject person.

295.1. Any subject person who is entitled to a hearing pursuant to this article may waive that right at any time. A waiver under this section shall relieve the commissioner from having to issue a formal notice of hearing that would otherwise be required by this article.

295.2. (a) Within 30 days after an order is issued pursuant to Section 297, 298.1, 299, 300.1, or 301.1, or subdivision (c) of Section 300.2, the person to whom the order is issued may file with the commissioner an application for a hearing on the order.

(b) If the commissioner fails to commence the hearing within 15 business days after the application is filed with the commissioner or within any longer period to which the person subject to the order consents, the order shall be deemed rescinded.

(c) Within 30 days after the hearing, or within any longer period to which the person consents, the commissioner shall affirm, modify, or rescind the order. If the commissioner fails to affirm, modify, or rescind the order within that time limit, the order shall be deemed rescinded.

(d) The right to petition for judicial review of the order shall not be affected by the failure of the person subject to the order to apply to the commissioner for a hearing on the order pursuant to subdivision (a).

295.3. In addition to any other action or requirement the commissioner deems necessary or advisable, an order issued pursuant to Section 297.1, 298, 298.1, 299, 300, 300.1, or 300.2 may require the person subject to the order to do any of the following:

(a) Make restitution or provide reimbursement, indemnification, or guarantee against loss, if the subject institution, subject person, or holding company was unjustly enriched by the action or violation or if the action or violation involved a reckless disregard for any provision of this division, of any regulation or order issued under this division, of any other applicable law, or of any agreement with the commissioner.

(b) Restrict the growth of the subject institution.

(c) Dispose of any loan or other asset.

(d) Correct violations of law.

(e) Employ qualified officers or employees, who may be subject to approval of the commissioner.

(f) Limit the activities or functions of the subject institution, subject person, or holding company.

295.4. If the commissioner takes possession of a subject institution without a prior notice or hearing, or takes action against a subject person without prior notice or hearing, the commissioner shall, upon taking possession or taking that action, concurrently provide to the subject institution or subject person a written order. The order shall set forth the condition or conditions of the subject institution or action or actions of the subject person that constitute the basis or bases for the commissioner's action. In any case where the commissioner takes possession of a subject

institution, the commissioner shall establish, by clear evidence, the basis for his or her action.

296. (a) The commissioner may bring an action in the name of the people of this state in superior court to enjoin any violation of, to enforce compliance with, or to collect any penalty or other liability imposed under, any law subject to the jurisdiction of the commissioner. The commissioner may bring an action in the name of the people of this state in superior court to enjoin any violation of, to enforce compliance with, or to collect any penalty or other liability imposed under, any regulation promulgated under the power of the commissioner. The commissioner may bring an action in the name of the people of this state in superior court to enjoin any violation of, to enforce compliance with, or to collect any penalty or other liability imposed under, any (1) agreement entered into with the commissioner or (2) order issued by the commissioner. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted, and a monitor, receiver, conservator, or other designated fiduciary or officer of the court may be appointed for the defendant or the defendant's assets, or other relief may be granted as appropriate.

(b) A receiver, monitor, conservator, or other designated fiduciary officer of the court appointed by the court pursuant to this section may, with the approval of the court, exercise all of the powers of the defendant's officers, directors, partners, trustees, or persons who exercise similar powers and perform similar duties. No action at law or in equity may be maintained by any party against the commissioner or a receiver, monitor, conservator, or other designated fiduciary or officer of the court by reason of his or her exercise of those powers or performing these duties pursuant to the order of, or with the approval of, the court.

(c) If the commissioner finds that it is in the public interest, the commissioner may include in any action authorized by subdivision (a) a claim for ancillary relief, including a claim for restitution, disgorgement, or damages on behalf of the person injured by the act or practice constituting the subject matter of the action, and the court shall have jurisdiction to award ancillary relief.

(d) Neither the provision of subdivision (a) that authorizes the appointment of a monitor, receiver, conservator, or other designated fiduciary or officer of the court nor any provision of subdivision (b) or (c) applies to any of the following:

(1) A licensee that is authorized by the commissioner to transact appropriate licensee business.

(2) A foreign (other state) or foreign (other nation) bank or credit union that maintains an office in this state in accordance with federal law, the law of this state, and the law of the bank or credit union's domicile.

(e) The provisions of this section that authorize the commissioner to bring actions and seek relief are not intended to, and do not, affect any right that any other person may have to bring the same or similar actions or to seek the same or similar relief.

297. If the commissioner finds that a person has conducted, or that there is reasonable cause to believe that a person is about to conduct, business that requires a license issued by the commissioner and that person has not been issued the required license, the commissioner may, without any prior notice or hearing, order the person to cease and desist from conducting any unauthorized business unless and until the person is issued a license to engage in appropriate licensee business.

298. If, after notice and an opportunity to be heard, the commissioner finds any of the factors set forth in subdivision (a) or (b) with respect to any subject institution, subject person, or any holding company, the commissioner may order the subject institution, subject person, or holding company to cease and desist from the act or violation:

(a) That the subject institution, subject person, or holding company has engaged or participated, is engaging or participating, or that there is reasonable cause to believe that the subject institution, subject person, or holding company is about to engage or participate, in any unsafe or unsound act with respect to the business of the subject institution.

(b) That the subject institution, subject person, or holding company has violated, is violating, or that there is reasonable cause to believe that the subject institution, subject person, or holding company is about to violate any:

(1) Provision of any division subject to the jurisdiction of the commissioner.

(2) Provision of any regulation promulgated by, or subject to the jurisdiction of, the commissioner.

(3) Provision of any other applicable law.

(4) Provision of any written agreement between the subject institution, subject person, or holding company, and the commissioner.

298.1. If the commissioner finds that any of the factors set forth in Section 298 is true with respect to any subject institution, subject person, or holding company, and that the action, omission, or violation is likely to have any of the consequences set forth in subdivisions (a) to (d), inclusive, the commissioner may, without any prior notice or opportunity to be heard, order the subject institution or subject person to cease and desist from the following:

(a) Any act, omission, or violation that may cause the insolvency of the subject institution.

(b) Any act, omission, or violation that may cause significant dissipation of the assets or earnings of the subject institution.

(c) Any act, omission, or violation that may weaken the condition of the subject institution.

(d) Any act, omission, or violation that may otherwise prejudice the interests of the customers of the subject institution.

299. If the commissioner finds that a subject institution's books or records are so incomplete or inaccurate that the commissioner is unable through the normal supervisory process to determine the financial condition of the subject institution or the details or purpose of any transaction or

transactions that may materially affect the financial condition of the subject institution, the commissioner may, without any prior notice or hearing, order the subject institution to do either of the following:

(a) Cease any activity or practice that gave rise, in whole or in part, to the incomplete or inaccurate state of the books or records.

(b) Take affirmative action to restore the books or records to a complete and accurate state.

300. If, after notice and an opportunity to be heard, the commissioner finds that any of the factors set forth in subdivision (a), any of the factors set forth in subdivision (b), and any of the factors set forth in subdivision (c) are true with respect to a subject person of a subject institution or holding company, the commissioner may issue an order suspending or removing the subject person from the subject person's office, if any, with the subject institution or holding company, and prohibiting the subject person from participating in any manner in the conduct of the affairs of the subject institution or holding company without the approval of the commissioner:

(a) (1) That the subject person has, directly or indirectly, violated, or has caused a subject institution to violate, any provision of any:

(A) Division subject to the jurisdiction of the commissioner.

(B) Regulation promulgated by, or subject to the jurisdiction of, the commissioner.

(C) Other applicable law.

(D) Order issued by the commissioner or under the commissioner's authority.

(E) Written agreement between the subject institution, subject person, or holding company and the commissioner.

(2) That the subject person has, directly or indirectly, engaged or participated in any unsafe or unsound act in connection with the business of the subject institution, holding company, or any other business institution.

(3) That the subject person has, directly or indirectly, engaged or participated in any act that constitutes a breach of the subject person's fiduciary duty.

(b) That, by reason of the act, violation, or breach of fiduciary duty described in subdivision (a):

(1) The subject institution, holding company, or business institution has suffered or will probably suffer financial loss or other harm.

(2) The rights or interests of the customers or members of the subject institution have been or could be prejudiced.

(3) The subject person has received financial gain or other benefit.

(c) That the act, violation, or breach of fiduciary duty described in subdivision (a) either involves dishonesty on the part of the subject person or demonstrates the subject person's willful or continuing disregard for the safety or soundness of the subject institution, holding company, or business institution.

300.1. If the commissioner finds that any of the factors set forth in subdivision (a) of Section 300, any of the factors set forth in subdivision (b) of Section 300, and any of the factors set forth in subdivision (c) of

Section 300 are true with respect to a subject person of a subject institution, and that it is necessary or advisable for the protection of the subject institution or holding company, or the rights or interests of the customers or members of the subject institution, the commissioner may, without any prior notice or opportunity to be heard, issue an order suspending the subject person from the subject person's office, if any, with the subject institution or holding company, and prohibiting the subject person from participating in any manner in the conduct of the affairs of the subject institution or holding company without the prior approval of the commissioner.

300.2. (a) If the commissioner finds that any of the factors set forth in paragraph (1) and the factor set forth in paragraph (2) are true with respect to a subject person or former subject person of a subject institution or holding company, the commissioner may, without any prior notice or opportunity to be heard, issue an order suspending the subject person or former subject person from his or her office, if any, with the subject institution or holding company and prohibiting him or her from further participating in any manner in the conduct of the affairs of the subject institution or holding company without the approval of the commissioner:

(1) That the subject person or former subject person has been charged in an indictment issued by a grand jury or in an information, complaint, or similar pleading issued by a United States attorney, district attorney, or other governmental official or agency authorized to prosecute crimes, with commission of or participation in any of the following:

(A) A crime that involves dishonesty or breach of trust and that is punishable by imprisonment for a term exceeding one year.

(B) A criminal violation of any provision of this division.

(C) A criminal violation of Section 1956, 1957, or 1960 of Title 18 of, or Section 5322 or 5324 of Title 31 of, the United States Code.

(D) A criminal violation of a law of any jurisdiction other than the United States that is substantially similar to any of the statutes specified in subparagraph (C).

(2) That continued or resumed service or participation by the subject person or former subject person may pose a threat to the rights or interests of the customers or members of the subject institution or may threaten to impair public confidence in the subject institution.

(b) An order issued pursuant to subdivision (a) shall remain in effect until the indictment or the information, complaint, or similar pleading is finally disposed of or, if the order is earlier terminated by the commissioner, until the order is so terminated.

(c) If the commissioner finds that the factors set forth in paragraphs (1) and (2) are true with respect to a subject person or former subject person of a subject institution or holding company, the commissioner may, without any prior notice or opportunity to be heard, issue an order suspending or removing the subject person or former subject person from his or her office, if any, with the subject institution or holding company and prohibiting him or her from further participating in any manner in the affairs of the subject institution or holding company without the approval of the commissioner:

(1) That the subject person or former subject person has been finally convicted of any crime of the type described in paragraph (1) of subdivision (a). For purposes of this paragraph, an agreement to enter a pretrial diversion or similar program is deemed to be a conviction.

(2) That continued or resumed service or participation by the subject person or former subject person may pose a threat to the interests of the customers of the subject institution or may threaten to impair public confidence in the subject institution.

(d) The fact that any subject person of a subject institution charged with a crime of the type described in paragraph (1) of subdivision (a) is not finally convicted of the crime does not preclude the commissioner from issuing an order regarding the subject person pursuant to any other provision of this article.

300.3. (a) Any subject institution, subject person of a subject institution, or former subject person of a subject institution to whom an order is issued under Sections 300 to 300.2, inclusive, may apply to the commissioner to modify or rescind the order. In deciding whether to grant or deny the application, the commissioner shall consider whether it is in the public interest to modify or rescind the order and whether it is reasonable to believe that the subject person or former subject person will, if and when he or she becomes a subject person of a subject institution or holding company, comply with all applicable provisions of law, or any regulation or order issued by the commissioner.

(b) The right of any subject person or former subject person of a subject institution or holding company to whom an order is issued under Sections 300 to 300.2, inclusive, to petition for judicial review of the order shall not be affected by the failure of the subject institution or holding company to apply to the commissioner pursuant to subdivision (a) to modify or rescind the order.

300.4. (a) In this section, “subject depository institution” means any:

(1) Licensee or any bank or credit union that maintains an office in this state.

(2) Affiliate of any of the institutions specified in paragraph (1).

(3) Subsidiary of any of the institutions specified in paragraph (1).

(4) Holding company of any of the institutions specified in paragraph (1).

(b) It is unlawful for any subject person or former subject person of a subject institution to whom an order is issued under Sections 300 to 300.2, inclusive, willfully to do, directly or indirectly, any of the following without the approval of the commissioner, so long as the order is in effect:

(1) Act as a subject person of any subject depository institution.

(2) Vote any shares or other securities having voting rights for the election of any person as a director of a subject depository institution.

(3) Solicit, procure, transfer or attempt to transfer, or vote any proxy, consent, or authorization with respect to any shares or other securities of a subject depository institution having voting rights.

(4) Otherwise to participate in any manner in the affairs of any subject depository institution.

301. The commissioner may revoke or suspend any license issued by, or under the authority of, the commissioner, if, after notice and opportunity to be heard, the commissioner finds any of the following:

(a) The licensee has violated, is violating, or that there is reasonable cause to believe that the licensee is about to violate, any provision of any of the following:

(1) Any division subject to the jurisdiction of the commissioner.

(2) Any regulation promulgated by, or subject to the jurisdiction of, the commissioner.

(3) A provision of any other applicable law.

(4) A provision of any order issued by the commissioner.

(5) A provision of any written agreement between the licensee and the commissioner.

(6) A condition imposed on any written approval granted by the commissioner.

(b) Any fact or condition exists which, if it had existed at the time of the original application for the license, would be grounds for denying the application for the license.

(c) The licensee is conducting its business in an unsafe manner.

(d) The licensee is in such condition that it is unsafe or unsound for the licensee to transact appropriate licensee business.

(e) The licensee has inadequate capital or net worth or is insolvent.

(f) The licensee failed to pay any of its obligations as they came due or is reasonably expected to be unable to pay its obligations as they come due.

(g) The licensee is the subject of an order for relief in bankruptcy, or has sought other relief under any bankruptcy, reorganization, insolvency, or moratorium law, or any person has applied for any such relief under any such law against the licensee and the licensee has by any affirmative act approved of, or consented to, the action or the relief has been granted.

(h) The licensee has ceased to transact appropriate licensee business.

(i) The licensee refuses to submit its books, papers, and affairs to the inspection of any examiner.

(j) Any officer of the licensee refuses to be examined upon oath touching the concerns of the licensee.

(k) The licensee has, with the approval of its board, requested the commissioner to take possession of its property and business.

301.1. If the commissioner finds that any of the factors set forth in Section 301 is true with respect to any licensee and that it is necessary for the protection of the public interest, the commissioner may issue an order immediately suspending or revoking the licensee's license.

302. If the commissioner finds that any of the factors set forth in subdivisions (a) to (k), inclusive, is true with respect to a licensee, the commissioner may by order, without any prior notice or opportunity to be heard, take possession of the property and business of the licensee:

(a) The licensee has violated any provision of (1) any division subject to the jurisdiction of the commissioner, (2) any regulation promulgated by, or subject to the jurisdiction of, the commissioner, (3) any provision of any other applicable law, (4) any provision of any order issued by the commissioner, (5) any provision of any written agreement made between the commissioner and the licensee, or (6) a condition imposed on any written approval granted by the commissioner.

(b) The licensee is conducting its business in an unsafe or unsound manner.

(c) The licensee is in such condition that it is unsafe or unsound for the licensee to transact appropriate licensee business.

(d) The licensee has inadequate capital or net worth or is insolvent.

(e) If the licensee is a bank, the tangible shareholders' equity of the bank is less than the following:

(1) If the bank is a commercial bank or industrial bank, the greater of three percent of the bank's total assets or one million dollars (\$1,000,000).

(2) If the bank is a trust company other than a commercial bank authorized to engage in trust business, one million dollars (\$1,000,000).

(f) The licensee failed to pay any of its obligations as they came due or is reasonably expected to be unable to pay its obligations as they come due.

(g) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any bankruptcy, reorganization, insolvency, or moratorium law, or that any person has applied for any such relief under any such law against the licensee and the licensee has by any affirmative act approved of or consented to the action or the relief has been granted.

(h) The licensee has ceased to transact the business the licensee is authorized to conduct pursuant to its license.

(i) The licensee refuses to submit its books, papers, and affairs to the inspection of any examiner.

(j) Any officer of the licensee refuses to be examined upon oath touching the concerns of the licensee.

(k) The licensee has, with the approval of its board, requested the commissioner to take possession of its property and business.

302.1. (a) If the commissioner takes possession of the property and business of a licensee pursuant to Section 302, the licensee may, within 10 days, apply to the superior court in the county where its head office is located to enjoin further proceedings. The court may, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing, dismiss the application or enjoin the commissioner from further proceedings and order the commissioner to surrender the property and business of the licensee to the licensee or make any further order as may be just. The judgment of the court may be appealed by the commissioner or by the licensee as allowed by law.

(b) At any time after the commissioner takes possession of the property and business of a licensee pursuant to Section 302, the licensee may, with

the approval of the commissioner, resume business upon conditions as the commissioner may prescribe.

302.2. (a) Upon taking possession of the property and business of any licensee, the commissioner shall give notice of that fact to all persons holding or having in their possession any assets of the licensee. No person knowing of the taking, or who has been notified thereof, shall have a lien or charge upon any assets of the licensee for any payment, advance, or clearance thereafter made or for any liability thereafter incurred.

(b) The giving of notice in accordance with this section shall not be deemed to be a prerequisite to the taking of possession of the property and business of the licensee.

302.3. The commissioner is deemed to take possession of the entire property and business of a licensee when the commissioner takes possession of the business and property of the head office of the licensee.

SEC. 19. Article 8 (commencing with Section 305) is added to Chapter 2 of Division 1 of the Financial Code, to read:

Article 8. Liquidation and Conservation

305. In this article, “Federal Insurance Agency” means the Federal Deposit Insurance Corporation or the National Credit Union Administration, as appropriate, or their respective successors-in-interest.

305.1. Upon taking possession of the property and business of any licensee, the commissioner has authority, and it is his or her duty, to collect all moneys due to the licensee and to do other acts as are necessary or expedient to collect, conserve, or protect the licensee’s assets, property, and business, and he or she shall proceed to conserve or liquidate the affairs of the licensee as provided in this article.

305.2. No attachment shall be issued against the property of any licensee subject to conservation or liquidation pursuant to this article.

305.3. Upon taking possession of the property and business of any licensee pursuant to Section 302, the commissioner may proceed to liquidate or conserve the licensee in the manner provided by this article.

305.4. Upon taking possession of the property and business of a licensee pursuant to Section 302, the commissioner may tender to any person or persons an appointment as conservator, liquidator, receiver, or liquidating committee of the licensee.

305.5. The commissioner shall supervise the acts of the conservator, liquidator, receiver, or liquidating committee appointed under this article and may remove the conservator, liquidator, receiver, or any or all members of the liquidating committee in his or her discretion.

305.6. If required by the commissioner, the conservator, liquidator, receiver, or members of the liquidating committee appointed under this article shall provide proof of bond coverage that extends to the conservator, liquidator, receiver, or members of the liquidating committee. The bond

shall include fraud, dishonesty, and faithful performance coverage. The premium for that bond shall be paid out of the assets of the licensee.

305.7. (a) If the commissioner retains possession of the assets of the licensee for the purpose of liquidation or conservation, the commissioner shall, to the extent possible, use the services of civil service employees of the commissioner's office, and the attorneys employed by the commissioner or the Department of Justice shall render all necessary legal services, as the commissioner may request.

(b) The commissioner, from time to time, under his or her official seal, may appoint one or more special deputy commissioners as his or her agent or agents with the powers specified in the certificate of appointment to assist him or her in the duties of conservation or of liquidation and distribution. The certificate of appointment shall be filed in the office of the commissioner and a certified copy in the office of the clerk of the county in which the head office of the licensee is located. The commissioner may employ counsel and procure expert assistance and advice as may be necessary in the liquidation and distribution of the assets of the licensee and for that purpose may retain any of the officers or employees of the licensee as the commissioner may deem necessary.

305.8. The compensation of civil service employees, special deputies, counsel, and other employees and assistants appointed to assist in the conservation or liquidation of any licensee and the distribution of its assets and all expenses of supervision and liquidation shall be fixed by the commissioner and shall be paid out of the funds of the licensee in the hands of the commissioner. The expenses of liquidation shall be reported to the court upon each application for payment of a dividend.

305.9. If a licensee is not insured by a Federal Insurance Agency, upon the commissioner taking possession of the business and property of the licensee, the superior court of the State of California for the county in which the head office of the licensee is located shall have exclusive original jurisdiction of all proceedings relating thereto and of any action or other proceedings brought under the provisions of this article. All papers relating to the proceeding, including copies of the certificate of appointment of any special deputy and the inventories required to be filed, shall be filed and be made a part of the record of the proceeding without the payment of any additional fees. No damages may be awarded in the proceeding but, if sought, may only be recovered in a separate action.

310. If the licensee whose property and business has been taken pursuant to Section 302 is insured by a Federal Insurance Agency, the commissioner may tender to the appropriate Federal Insurance Agency an appointment as conservator, liquidator, or receiver of the licensee. The commissioner shall determine whether the licensee whose property and business has been taken shall be liquidated or conserved. If the Federal Insurance Agency accepts the appointment, the Federal Insurance Agency shall have, in addition to any powers conferred by applicable federal law, the powers conferred on the commissioner pursuant to this article.

310.1. The Federal Insurance Agency may be, and act as, a conservator, liquidator, or receiver without bond.

310.2. If the Federal Insurance Agency accepts the appointment in accordance with Section 310.1, the rights of customers and other creditors of the insured licensee shall be determined in accordance with the applicable provisions of the laws of this state.

310.3. The Federal Insurance Agency conservator, liquidator, or receiver shall possess with respect to the insured licensee all the powers, rights, and privileges given the commissioner under this article with respect to the conservation or liquidation of a licensee, as appropriate, and the property and assets of which he or she has taken possession, except insofar as the same may be in conflict with the provisions of applicable federal law.

310.4. (a) The commissioner may sell to any other licensee any part or the whole of the business of a licensee that is subject to liquidation or conservatorship. The purchase and sale shall be approved by the purchasing licensee, as follows:

(1) If the purchasing licensee is organized under the laws of this state, by two-thirds of all of its directors.

(2) If the licensee is any licensee other than a licensee organized under the laws of this state, in accordance with the laws of the jurisdiction under which the licensee is organized.

(b) (1) Subject to any applicable federal statutes and regulations, any bank or credit union organized under the laws of this state may, with the approval of two-thirds of all of its directors, purchase from the receiver of a national banking association or a federal credit union the whole or any part of the business of the national banking association or federal credit union.

(2) Subject to any applicable federal statutes and regulations and any applicable laws of the jurisdiction under which a foreign corporation is organized, any foreign corporation or office of a foreign corporation that is licensed by the commissioner to transact business in this state and that is authorized to accept shares or deposits in this state, may purchase from the receiver of a national banking association or federal credit union the whole or any part of the business of the national banking association or federal credit union.

(c) The provisions of Chapter 12 (commencing with Section 1200) and Chapter 13 (commencing with Section 1300) of Division 1 of Title 1 of the Corporations Code shall not apply to any purchase and sale of the type described in subdivision (a) or (b).

(d) When a purchase and sale of the type described in subdivision (a) or (b) becomes effective, the licensee shall, ipso facto and by operation of law and without further transfer, substitution, act, or deed, to the extent provided in the agreement of the purchase and sale or in the order of the court approving the purchase and sale and except as withheld or limited by the agreement or by the order:

(1) Succeed to the rights, obligations, properties, assets, investments, shares, deposits, demands, and agreements of the licensee whose business

is sold, subject to the right of every customer of a licensee to withdraw his or her shares or deposit in full on demand after the sale, irrespective of the terms under which the share or deposit was made.

(2) Succeed to the rights, obligations, properties, assets, investments, shares, deposits, demands, and agreements of the licensee whose business is sold under all trusts, executorships, administrations, guardianships, conservatorships, agencies, and other fiduciary or representative capacities, to the same extent as though the purchasing licensee had originally assumed, acquired, or owned the same, subject to the rights of trustors and beneficiaries under the trusts so sold to nominate another or succeeding trustee of the trust so sold after the sale.

(3) Succeed to and be entitled to take and execute the appointment to executorships, trusteeships, guardianships, conservatorships, and other fiduciary and representative capacities to which the licensee whose business is sold is or may be named in wills, whenever probated, or to which it is or may be named or appointed by any other instrument.

(e) For purposes of subdivision (d), any purchase and sale of the type referred to in subdivision (d) shall be deemed to be effective at the time provided in the agreement of the purchase and sale or in the order of the court approving the purchase and sale.

315. Whenever the commissioner deems it necessary in order to conserve the assets of any licensee that does not have federal deposit or share insurance for the benefit of the customers and other creditors, he or she may appoint a conservator of the licensee and require the conservator to post a bond as the commissioner deems proper. The conservator, under the direction of the commissioner, shall take possession of the books, records, and assets of every description of the licensee and take any action as the conservator may deem necessary to conserve the assets of the licensee pending further disposition of its business.

315.1. A conservator appointed in accordance with Section 315 has all of the powers and rights with relation to the business and the property of the licensee for which he or she is appointed conservator as are possessed by the commissioner under this article with relation to a licensee of which the commissioner has taken possession, and the conservator is subject to the same obligations as are imposed upon the commissioner under this article. During the time that the conservator remains in possession of the licensee the rights of the licensee, and of all persons with respect thereto, subject to the other provisions of this article, are the same as if the commissioner had taken possession of the property and business of the licensee for the purposes of liquidation. All expenses of the conservatorship shall be paid out of the assets of the licensee and shall be a lien thereon which shall be prior to any other lien. The conservator shall receive a salary in an amount no greater than that which would be paid by the commissioner to a special deputy in charge of the liquidation of a licensee.

315.2. The commissioner may order an examination at the earliest possible date of a licensee for which the commissioner has appointed a conservator.

315.3. While any licensee is in the hands of a conservator, the commissioner may require the conservator to set aside and make available for withdrawal by customers and for payment to other creditors on a ratable basis such amounts as in the opinion of the commissioner may safely be used for that purpose.

315.4. The commissioner, in his or her discretion, may permit the conservator to receive shares or deposits, but any shares or deposits received while the licensee is in the hands of a conservator shall be held as trust funds and shall not be subject to any limitation as to payment or withdrawal. The shares or deposits shall be segregated and shall not be used to liquidate any indebtedness of the licensee existing at the time the conservator was appointed or for the payment of any later indebtedness incurred for the purpose of liquidating any indebtedness of the licensee existing at the time the conservator was appointed. The shares or deposits shall be kept on hand in cash, invested in direct obligations of the United States, or deposited with the Federal Reserve Bank.

315.5. If the commissioner is satisfied that it may be done safely and that it would be in the public interest, he or she may terminate a conservatorship and permit the licensee for whom a conservator was appointed to resume the transaction of its business under the direction of its board, subject to any terms, conditions, restrictions, and limitations as the commissioner may prescribe.

315.6. The conservator of a licensee that has been permitted to resume accepting member shares or deposits shall first cause a notice to be published in a newspaper of local circulation. The notice shall state the date on which the affairs of the licensee will be returned to its board and that the provisions of Section 315.4 will not be effective after 30 days from that date. The form of the notice and the newspaper in which the same is to be published shall be first approved by the commissioner. On the date of the publication of the notice, the conservator shall mail a copy of the notice to every person who made any deposit in the licensee after the date of the appointment of the conservator. The conservator shall address the copy of the notice to the persons who have made the deposits at the addresses appearing upon the books of the licensee. The conservator shall also mail a similar notice to every person making a deposit in the licensee after the date of the publication of the notice and before the affairs of the licensee are returned to its board.

315.7. The commissioner may assess and collect from all licensees for whom a conservator is appointed their ratable share of the costs incurred in the administration of this article.

315.8. Any licensee that the commissioner has taken possession of pursuant to Section 302, and for which a conservator has been appointed pursuant to this article, may be reorganized under a plan that requires the consent of any of the following:

(a) Customers and other creditors of the licensee representing at least 75 percent in amount of its total member shares or deposits and other liabilities as shown by the books of the licensee, excluding member shares or deposits

and other liabilities which are to be satisfied in full under the provisions of the plan.

(b) Stockholders owning at least two-thirds of the outstanding stock as shown by the books of the licensee.

(c) Members of the licensee.

(d) Customers and other creditors of the licensee representing at least 75 percent in amount of its total shares or deposits and other liabilities as shown by the books of the licensee, excluding shares or deposits and other liabilities that are to be satisfied in full under the provisions of the plan, and, if applicable to the licensee, of stockholders owning at least two-thirds of its outstanding stock as shown by the books of the licensee.

315.9. All customers, creditors, stockholders, if applicable, and other interested persons shall be given notice of any proposed plan of reorganization in the manner and at the times as the commissioner directs.

315.10. No plan of reorganization shall become effective until the commissioner finds that the plan is fair and equitable to all customers, creditors, and stockholders, if applicable, and is in the public interest and until the commissioner approves the same in writing, subject to any conditions, restrictions, and limitations as the commissioner may prescribe.

315.11. No creditor having security for the payment of his, her, or its claim shall be affected in his, her, or its right to enforce the security by the provisions of any plan for the reorganization of the licensee. Any plan of reorganization involving the reduction of claims of creditors shall apply only to that portion of a secured creditor's loan that is not covered by the pledged security.

315.12. When any plan of reorganization becomes effective, all books, records, and assets of the licensee shall be disposed of in accordance with the provisions of the plan and the affairs of the licensee shall be conducted by its board in the manner provided by the plan and under the conditions, restrictions, and limitations that may have been prescribed by the commissioner. When any plan of reorganization adopted and approved as herein provided becomes effective, all customers and other creditors and, if applicable, stockholders of the licensee, whether or not they have consented to the plan of reorganization, shall be fully and in all respects subject to and bound by the plan's provisions and the claims of all customers and other creditors shall be treated as if they had consented to the plan of reorganization.

320. Upon taking possession of the property and business of a licensee that does not have federal deposit or share insurance, the commissioner may sell, compromise, or compound any bad or doubtful debt owing the licensee for a principal sum not exceeding ten thousand dollars (\$10,000), upon those terms as the commissioner may deem proper. If the principal sum thereof exceeds ten thousand dollars (\$10,000), the commissioner may compromise, compound, or sell the debt upon those terms as the court may approve. If it appears improbable that a recovery on a debt can be had, and that the costs of an action to collect would be lost, and the principal sum thereof does not exceed five hundred dollars (\$500), the commissioner may

determine that no suit thereon shall be brought. If the principal sum of that debt exceeds ten thousand dollars (\$10,000), the commissioner may determine that no suit thereon be brought after obtaining approval of the court.

320.1. The commissioner may sell any real or personal property of the licensee for cash or on credit and on any other terms and conditions as the commissioner may deem proper, subject to the approval of the court.

320.2. (a) The commissioner may, with the approval of the court, sell any part or the whole of the business of a licensee to any other licensee. The purchase and sale shall be approved by the purchasing licensee, as follows:

(1) If the purchasing licensee is organized under the laws of this state, by two-thirds of all of its directors.

(2) If the licensee is any licensee other than a licensee organized under the laws of this state, in accordance with the laws of the jurisdiction under which the licensee is organized.

(b) (1) Subject to any applicable federal statutes and regulations, any bank or credit union organized under the laws of this state may, with the approval of two-thirds of all of its directors and of the commissioner, purchase from the receiver of a national banking association or a federal credit union the whole or any part of the business of the national banking association or federal credit union.

(2) Subject to any applicable federal statutes and regulations and any applicable laws of the jurisdiction under which a foreign corporation is organized, any foreign corporation or any office of a foreign corporation that is licensed by the commissioner to transact business in this state and that is authorized to accept shares or deposits in this state, may, with the approval of the commissioner, purchase from the receiver of a national banking association or federal credit union the whole or any part of the business of the national banking association or federal credit union.

(c) The provisions of Chapter 12 (commencing with Section 1200) and Chapter 13 (commencing with Section 1300) of Division 1 of Title 1 of the Corporations Code shall not apply to any purchase and sale of the type described in subdivision (a) or (b).

(d) When a purchase and sale of the type described in subdivision (a) or (b) becomes effective, the purchasing licensee shall, by operation of law and without further transfer, substitution, act, or deed, to the extent provided in the agreement of the purchase and sale or in the order of the court approving the purchase and sale and except as withheld or limited by the agreement or by the order:

(1) Succeed to the rights, obligations, properties, assets, investments, shares, deposits, demands, and agreements of the licensee whose business is sold, subject to the right of every customer of the licensee whose shares or deposit is sold to withdraw his or her shares or deposit in full on demand after the sale, irrespective of the terms under which the deposit was made.

(2) Succeed to the rights, obligations, properties, assets, investments, shares, deposits, demands, and agreements of the whose business is sold

under all trusts, executorships, administrations, guardianships, conservatorships, agencies, and other fiduciary or representative capacities, to the same extent as though the purchasing licensee had originally assumed, acquired, or owned the same, subject to the rights of trustors and beneficiaries under the trusts so sold to nominate another or succeeding trustee of the trust so sold after the sale.

(3) Succeed to and be entitled to take and execute the appointment to executorships, trusteeships, guardianships, conservatorships, and other fiduciary and representative capacities to which the licensee whose business is sold is or may be named in wills, whenever probated, or to which it is or may be named or appointed by any other instrument.

(e) For purposes of subdivision (d), any purchase and sale of the type referred to in subdivision (d) shall be deemed to be effective at the time provided in the agreement of the purchase and sale or in the order of the court approving the purchase and sale.

320.3. Within six months after taking possession of the property and business of any licensee that does not have federal deposit or share insurance, the commissioner may terminate or adopt any executory contract to which the licensee may be a party, including leases of real or personal property. Claims for damages resulting from the termination of any contract or lease may be filed and allowed, but no claim of a landlord for damages resulting from the rejection of an unexpired lease of real property or under any covenant of the lease shall be allowed in an amount exceeding the rent reserved by the lease, without acceleration, for the year succeeding the date of the surrender of the premises plus the amount of any unpaid accrued rent without acceleration. Any claim shall be filed within 30 days of the date of the termination or within the time that claims are to be filed under Section 320.10, whichever is longer.

320.4. The commissioner, in his or her own name or in the name of the licensee, may execute, acknowledge, and deliver any and all conveyances and other instruments necessary or appropriate to effectuate the sale of any real or personal property or to effectuate any other transaction in connection with the liquidation of a licensee or the distribution of its assets. Any conveyance or other instrument executed by the commissioner pursuant to this authority shall be valid and effectual for all purposes as though the same had been executed by the officers of the licensee by authority of its board of directors. Whenever the commissioner sells any real property of the licensee a certified copy of the order of the court approving the sale shall be recorded in the county in which any part of the real property is located.

320.5. The commissioner, in the name of the delinquent licensee or in his or her own name, may prosecute and defend any and all actions and other legal proceedings appropriate or necessary to the liquidation of the licensee.

320.6. The commissioner from time to time shall deposit all moneys coming into his or her hands in the course of the liquidation of the licensee in one or more state banks or state credit unions and in the event of the

suspension or insolvency of the depositary shall be preferred before all other deposits.

320.7. The commissioner shall make an inventory of the assets of the licensee in duplicate and file one in the office of the commissioner and one with the clerk of the county in which the head office of the licensee is located to be filed with the papers in the liquidation proceedings. The inventory shall be open for inspection at all reasonable times.

320.8. When the time fixed for the presentation of claims has expired, the commissioner shall make in duplicate a full and complete list of all claims presented, including and specifying claims that have been rejected by the commissioner, and a list of all claims of customers as shown by the books or records of the licensee for which claims have not yet been presented, and shall file one copy of the list in the commissioner's office and one with the clerk of the county in which the head office of the licensee is located to be filed with the papers in the liquidation proceedings. Before each application to the court for leave to declare a dividend, the commissioner shall file a supplemental list of claims presented since the last preceding list was filed, including and specifying any claims that have been rejected by him or her. The list of claims and of claims of customers as shown by the books or records of the licensee shall be open for inspection at all reasonable times.

320.9. The commissioner shall cause notice to be given by advertisement in any newspapers of general circulation as he or she may select weekly for three consecutive months, calling on all persons who have claims against the licensee to present the same to the commissioner and make legal proof thereof at a place to be specified therein and within four months of the date of the first publication of the notice, which date shall be specified in the notice. The notice shall also state that all claims other than those of customers appearing upon the books or records of the licensee shall be forever barred if not filed within the four months' period and that all claims of customers appearing upon the books or records of the licensee will be forever barred, except as herein provided, if not filed prior to the filing of a petition for a final dividend. The commissioner shall also mail a similar notice to all persons, including customers whose names appear as creditors upon the books of the licensee and whose addresses appear upon the books or records of the licensee, and shall enclose therewith a printed form of notice of claim.

320.10. All claims of every kind against the licensee or against any property owned or held by the licensee shall be presented to the commissioner in writing verified by the claimant or someone on his or her behalf within four months of the date of the first publication of the notice to creditors. Any claim, other than the claim of a customer whose claim appears upon the books or records of the licensee, not presented within the four months' period shall be forever barred and any claim of a customer whose claim appears upon the books or records of the licensee that is not so presented prior to the date of the filing of the petition of the commissioner with the court for approval of the payment of the final dividend shall be forever barred except as to any moneys remaining after all debts for which

claims were duly filed have been paid in full with interest. If the commissioner doubts the validity of any claim, he or she may reject the claim and serve notice of the rejection upon the claimant either by mail or personally. An affidavit of the mailing or personal service of the notice shall be prima facie evidence of the receipt thereof and shall be filed with the commissioner. Any action upon a rejected claim shall be brought within three months after the date of mailing or personal service of the notice of rejection.

320.11. At any time and from time to time after the expiration of the time fixed for the presentation of claims, the commissioner, after obtaining approval of the court, may declare and pay one or more dividends upon all approved claims out of the funds remaining in his or her hands after the payment of expenses and after setting aside an amount sufficient to pay to all customers, who have not yet filed claims but whose claims appear upon the books or records of the licensee, their pro rata share of the funds then available for the payment of a dividend. At any time after the expiration of one year from the date of the first publication of notice to creditors and after obtaining the approval of the court, the commissioner may declare and pay a final dividend.

320.12. (a) Expenses and claims of unsecured creditors have priority in the following order:

(1) Expenses of liquidation and approved claims for fees and assessments due the department.

(2) Approved claims given priority under other provisions of state or federal law, including, but not limited to, Sections 320.6 and 330.

(3) Approved claims for “deposits,” as that term is defined in 12 U.S.C. Section 1813(l), but including obligations of the type described in 12 U.S.C. Section 1813(l)(5)(A) and (B).

(4) Approved claims for other general liabilities.

(5) Approved claims for obligations subordinated to deposits and other general liabilities.

(b) Interest shall be given the same priority as the claim on which it is based, but no interest shall be paid on any claim until the principal of all claims within the same class has been paid or adequately provided for in full.

(c) Any funds remaining shall be paid to the members or shareholders, as appropriate.

320.13. Objections to any claim not rejected by the commissioner may be made by any person interested by filing a copy of the objection with the commissioner, who shall present the copy to the court at the time of the next application for approval of the declaration of a dividend. The court shall thereupon dispose of the objections or may order a reference for that purpose, and should the objections to any claim be sustained by the court or by the referee, the claim shall not be allowed by the commissioner until the claimant has established the claim by judgment.

320.14. Dividends remaining unpaid and any sums available for payment of shares or deposits for which no claim was filed, which remain in the

hands of the commissioner six months after the order for the payment of a final dividend, shall be deposited in the State Treasury. The shares or deposits shall be deemed to have been received under Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure, and shall be subject to claim or other disposition as provided in that chapter. The commissioner may pay over the moneys held by him or her to the persons respectively entitled thereto at any time prior to depositing the shares or deposits in the State Treasury, upon being furnished satisfactory evidence of the persons' right to the same.

320.15. Whenever, under the provisions of this article, the commissioner is required to transmit unclaimed money or other unclaimed property to any state officer for deposit in the State Treasury, the commissioner, upon request of the Controller, shall transmit to the Controller all signature cards and any other identifying information available from the records of the licensee, covering the money or other property. Upon receipt by the Controller of the signature cards or other identifying information, the licensee and the commissioner shall be relieved of all responsibility therefor. The signature cards and other identifying information may be destroyed or otherwise disposed of by the Controller whenever, in his or her discretion, their further retention by him or her is no longer required in the interest of the customers or the state.

320.16. All approved claims of customers and other creditors shall bear interest at the rate provided by law on judgments from the date that the commissioner takes possession of the property and business of the licensee.

320.17. If the licensee has in its possession for safekeeping or storage any jewelry, plate, money, specie, bullion, stocks, bonds, securities, valuable papers, or other valuable personal property, or has rented any vaults, safes, or safe-deposit boxes, the commissioner shall cause to be mailed, by registered mail, postage prepaid, to any known person claiming to be or appearing on the books of the licensee to be the owner of the property or to the person in whose name the safe, vault, or box stands a notice notifying the person to remove all of the personal property within a specified fixed period of not less than 60 days.

320.18. On the last day fixed in the notice for the removal of the property or on the date when the property is removed or the box surrendered, any contract between the person owning the property or holding the box and the licensee shall cease and the amount of the unearned prepaid rent or charges, if any, shall become a debt of the licensee to the person.

320.19. If any property is not removed within the time fixed by the notice mailed by the commissioner, the commissioner may dispose of the property as the court, on application thereto, shall direct. The commissioner may cause any safe, vault, or box to be opened in his or her presence or in the presence of one of the special deputy commissioners and of a notary not an officer or employee of the licensee or of the commissioner. The contents thereof, if any, shall be sealed by the notary in a package upon which the notary shall distinctly mark the name and address of the person in whose name the safe or box stands upon the books of the licensee and shall attach

thereon a list and a description of the property within the package. The package so sealed and addressed, together with the list and description may be kept by the commissioner in one or more of the safes or boxes of the licensee or elsewhere until delivered to the person whose name it bears or until otherwise disposed of as directed by the court.

320.20. (a) When the commissioner has completed the liquidation of the licensee, he or she shall petition the court for an order declaring the licensee duly wound up and dissolved.

(b) After any notice as the court may direct and a hearing, the court may make an order declaring the licensee duly wound up and dissolved. The order shall declare all of the following:

(1) The licensee has been duly wound up.

(2) A final franchise tax return, if any, as described by Section 23332 of the Revenue and Taxation Code, has been filed with the Franchise Tax Board as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code, and any tax or penalty due under the Corporation Tax Law has been paid, and the licensee's known debts and liabilities have been paid or adequately provided for, or any taxes, penalties, debts, and liabilities have been paid so far as the licensee's assets permitted, as the case may be. If there are known debts or liabilities for the payment of which adequate provision has been made, the order shall describe the provision, setting forth any information necessary to enable the creditor or other person to whom payment is to be made to appear and claim payment of the debt or liability.

(3) All known assets of the licensee have been distributed to its shareholders or wholly applied on account of the licensee's debts and liabilities.

(4) The licensee is dissolved.

(c) The court may make additional orders and grant further relief as it deems proper upon the evidence submitted.

(d) Upon the making of the order declaring the licensee dissolved, the corporate existence of the licensee shall cease, except for the purposes of any necessary further winding up.

(e) Upon the making of the order declaring the licensee dissolved, the commissioner shall file with the Secretary of State a copy of the order, certified by the clerk of the court.

320.21. Whenever this article requires court approval of any step in the liquidation proceedings, approval shall be given after a hearing upon notice as the court may direct. At the hearing, the court may by order approve the actions of the commissioner for which he or she has petitioned the court's approval or it may, by appropriate order, otherwise direct the commissioner in the matter in connection with which the petition was filed.

320.22. Whenever, in the opinion of the commissioner, the liquidation or reorganization of any licensee taken in charge by him or her would be facilitated, or the public interests and the interests of customers or stockholders would be served, the commissioner may borrow money on behalf of the licensee from any federal agency authorized to lend money to

receivers, trustees, liquidating agents, or other agents or supervisory authorities in charge of licensees that are closed or in process of liquidation and, with approval of the court, the commissioner may secure any borrowings by the pledge of the assets of the licensee in any manner and amount the commissioner deems necessary, proper, or expedient.

325. Whenever any licensee is being liquidated or whenever the trust business of any licensee has been discontinued and the licensee has in its possession money or other property held by it in trust or for safekeeping and the beneficiaries or persons entitled thereto are unknown or cannot be found, the commissioner or the licensee, upon obtaining approval of the superior court of the county in which the liquidation proceedings are pending or in which the head office of the licensee is situated, may do the following:

(a) In the case of money, deliver it to the Treasurer.

(b) In the case of other property, deliver it to the Controller for deposit in the State Treasury.

325.1. Upon the delivery of any money to the Treasurer or upon the delivery of any property to the Controller, a certified copy of the order of the court approving the delivery shall be given to the Controller, and upon the delivery of any money to the Treasurer a notice giving the amount delivered shall be filed with the Controller. Upon the receipt of any money or other properties, the Treasurer or the Controller, as the case may be, shall issue a receipt for the same and the receipt shall be deemed a voucher in favor of the licensee to the same extent as though executed by the beneficiary or other person entitled thereto.

325.2. All money or other property delivered to the Treasurer or Controller pursuant to this article shall be deemed to be delivered for deposit in the State Treasury under the provisions of Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure and shall be subject to claim or other disposition as provided in that chapter.

330. The holder or transferor of a negotiable instrument transferred to a licensee for collection has a preferred claim in the amount of the liability of the licensee on the instrument if the instrument was forwarded to the licensee by any person or by any other financial institution for collection and remittance, if payment therefor has not been made and if the same has been collected either in whole or in part by the licensee, unless the holder or transferor is a voluntary depositor in the licensee and the proceeds of the collection, at his or her request, have been credited by the licensee to his or her account.

SEC. 20. Article 9 (commencing with Section 335) is added to Chapter 2 of Division 1 of the Financial Code, to read:

Article 9. Voluntary Liquidation

335. Any licensee that voluntarily has ceased to do the business for which it is licensed shall immediately notify the commissioner and proceed to liquidate its affairs. Any share or deposit or other sum that has not been

paid to the person entitled thereto within six months after the licensee ceased to conduct a business shall be paid into the State Treasury. The deposits with the State Treasury shall be deemed to have been received under the provisions of Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure and shall be subject to claim or other disposition as provided in that chapter. If the commissioner has reason to conclude that the liquidation of the licensee is not being safely or expeditiously conducted, he or she may take possession of the business and property of the licensee in the same manner and with the same effect and subject to the same rights accorded the licensee as if he or she had taken possession pursuant to Article 8 (commencing with Section 305), and he or she may proceed to liquidate the licensee's affairs in the same manner as provided in that article. When the licensee has been completely liquidated, its corporate existence shall be dissolved in the manner provided by law.

335.1. If the licensee referred to in Section 335 is a state-chartered credit union and the commissioner has taken possession of the business and property of the credit union, the commissioner may appoint a liquidating agent or a liquidating committee of three members of the credit union to liquidate the business and assets of the credit union in the manner provided in Article 2 (commencing with Section 15250) of Chapter 9 of Division 5, except that, in lieu of the certificate required under Section 15252, the commissioner shall prepare and file in the office of the Secretary of State a certificate of commencement of liquidation proceedings upon taking possession of the business and assets, and the commissioner or his or her authorized deputy shall countersign the certificate referred to in Sections 15257 and 15258 whenever liquidation is involuntary. The commissioner may, however, prepare and file a final certificate whenever he or she retains possession of the assets of any credit union for the purpose of liquidation. The liquidating agent need not be a member of the credit union to be liquidated and may be a person, firm, or corporation, as determined by the commissioner.

SEC. 21. Section 352 is added to the Financial Code, to read:

352. Except where explicitly stated or the context provides otherwise, this division is applicable to the following:

(a) All corporations engaging in commercial banking, industrial banking, or the trust business.

(b) All national banking associations authorized to transact business in this state to the extent that the provisions of this division are not inconsistent with and do not infringe paramount federal laws governing national banking associations.

(c) All other corporations that subject themselves to the special provisions and sections of this division.

(d) All other persons, associations, copartnerships, or corporations who, by violating any of its provisions, become subject to the penalties provided for in this division.

SEC. 22. Section 353 is added to the Financial Code, to read:

353. (a) A California state bank is a corporation incorporated under Division 1 (commencing with Section 100) of Title 1 of the Corporations Code that is, with the approval of the commissioner, incorporated for the purpose of engaging in, or that is authorized by the commissioner to engage in, the commercial or industrial banking business.

(b) All provisions of law applicable to corporations generally, including, but not limited to, the General Corporation Law (Division 1 (commencing with Section 100), Title 1 of the Corporations Code) shall apply to banks. However, whenever any provision of this division or any regulation or order issued under any provision (other than this section) of this division applicable to banks is inconsistent with any provision of law applicable to corporations generally, that provision of this division or that regulation or order shall apply and the provision of law applicable to corporations generally shall not apply.

SEC. 23. Section 354 is added to the Financial Code, to read:

354. It shall be unlawful for any person, corporation, limited liability company, partnership, firm, or any other form of business entity allowed by law, to engage in or transact commercial banking business, industrial banking business, or trust business within this state except by means of a corporation duly organized for that purpose.

SEC. 24. Section 355 is added to the Financial Code, to read:

355. No corporation shall hereafter be organized under the laws of this state to transact the business of a commercial bank, industrial bank, or trust company, except as provided in this chapter.

SEC. 25. Section 356 is added to the Financial Code, to read:

356. Neither the enactment of this code nor the amendment or repeal thereof, nor the repeal of any statute affected thereby, shall take away or impair any liability or cause of action existing or incurred against any bank or trust company, or the shareholders, directors, or officers thereof.

SEC. 26. Section 357 is added to the Financial Code, to read:

357. The amount of funds of a bank or trust company that are deposited in any other financial institution (other than a Federal Reserve Bank) shall not at any time exceed 10 percent of the sum of shareholders' equity, allowance for loan and lease losses, capital notes, and debentures of the depositing bank or trust company unless the financial institution has been designated as a depository for the funds of the depositing bank or trust company by a vote of the majority of the directors of the depositing bank or trust company, and unless the financial institution has been approved by the commissioner as a depository for the purposes of this section. The commissioner may, in his or her discretion, revoke his or her approval of any such depository and may, in his or her discretion, limit the amount of funds that may be deposited by any bank or trust company with any other financial institution. A deposit by one bank or trust company with another financial institution shall not be regarded as a loan.

SEC. 27. Section 511 is added to the Financial Code, to read:

511. A bank, with the approval of its board, may discontinue a facility office. Within 10 days of the date of the closure of the facility office, the

bank shall file a notice of that discontinuance with the commissioner. The notice shall contain the information required by Section 506. There shall be no fee associated with the discontinuance of a facility office.

SEC. 28. Section 684 of the Financial Code is repealed.

SEC. 29. Section 770 is added to the Financial Code, to read:

770. A bank, or the agent of a bank, that has received a notice pursuant to Section 7507.6 of the Business and Professions Code, shall not make a subsequent assignment to skip trace, locate, or repossess a vehicle without simultaneously, and in the same manner by which the assignment is given, advising the assignee of the assignment of the information contained in the notice. As used in this section, “assignment” has the same meaning set forth in Section 7500.1 of the Business and Professions Code.

SEC. 30. Section 1210 of the Financial Code is amended to read:

1210. (a) In this article and in Article 4 (commencing with Section 3860) of Chapter 22, “affiliate,” when used with respect to a specified person, means any person controlling, controlled by, or under common control with, the specified person, directly or indirectly, through one or more intermediaries.

(b) “Control” has the meaning set forth in Section 700.

(c) “Regulated corporation” means any corporation or limited liability company or similar entity in which a bank makes an equity investment and which the bank controls.

(d) “Securities issued by a person” means any debt, equity, or other security issued by a person, and any and all affiliates of that person, issued for the benefit of that person or for the benefit of an affiliate of that person.

SEC. 31. Section 1211 of the Financial Code is amended to read:

1211. (a) Subject to the limitations and exceptions in Sections 1221 and 1330, a bank may hold both obligations made by a person, and securities issued by that same person.

(b) The total amount of obligations and securities held by a bank pursuant to subdivision (a) shall not exceed 25 percent of the sum of the shareholders’ equity, allowance for loan and lease losses, capital notes and debentures of the bank.

SEC. 32. Section 1212 of the Financial Code is amended to read:

1212. Subject to prior approval by the commissioner and to any limitations the commissioner may impose, the limitations in Sections 1211, 1221, and 1330 shall not apply to loans made by a bank to, and the bank’s investments in securities of, its regulated corporations.

SEC. 33. Section 1339 is added to the Financial Code, to read:

1339. A bank or trust company may acquire stock in settlement or reduction of a loan or in exchange for an investment previously made in good faith where the acquisition of the stock is necessary in order to minimize or avoid loss arising out of the loan or investment. The limitation in Section 1330 shall not apply to the stock acquired in accordance with this section. Whenever any stock that is acquired in accordance with this section can be sold for an amount sufficient to reimburse the bank or trust company for all loss arising out of the loan for which the stock was security

or arising out of the original investment by the bank or trust company, the bank or trust company shall sell the same or shall convert the stock to an investment subject to Section 1330.

SEC. 34. Section 1501.2 of the Financial Code is amended to read:

1501.2. The following persons are exempt from Section 1500:

(a) Any natural person serving as trustee of one or more trusts where at least one trustor is a family member of that trustee. For purposes of this section, “family member” means any lineal ancestor, lineal descendant, person having a common lineal ancestor of not more than four generations distant, spouse, father-in-law, mother-in-law, sister-in-law, brother-in-law, stepparent, or stepchild.

(b) Any member of the State Bar, as specified in Section 6002 of the Business and Professions Code, any certified public accountant, as defined in Section 5033 of the Business and Professions Code, and any professional corporation of one or more members of the State Bar or certified public accountants, where these professionals are acting as trustee of a trust established by them for their respective clients, provided that the member of the State Bar, certified public accountant, or professional corporation engages in no advertising for trust business in this state.

(c) Subject to all applicable limitations and restrictions in law for nonprofit corporations, any nonprofit corporation acting as trustee incidental to the purposes for which it was organized.

(d) Any person appointed as receiver, trustee, or other fiduciary by a court of competent jurisdiction acting pursuant to that authority.

(e) Any person licensed as a professional fiduciary pursuant to Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code.

SEC. 35. Section 1583 of the Financial Code is amended to read:

1583. The commissioner shall examine the court trust business of a trust company at least once every 24 months and shall examine the private trust business at such times and to such extent as he or she may deem necessary or advisable.

SEC. 36. Section 1910 of the Financial Code is repealed.

SEC. 37. Section 1911 of the Financial Code is repealed.

SEC. 38. Section 1911.5 of the Financial Code is repealed.

SEC. 39. Section 1912 of the Financial Code is repealed.

SEC. 40. Section 1913 of the Financial Code is repealed.

SEC. 41. Section 1913.5 of the Financial Code is repealed.

SEC. 42. Section 1951 of the Financial Code is repealed.

SEC. 43. Section 1952 of the Financial Code is repealed.

SEC. 44. Chapter 17 (commencing with Section 3100) of Division 1 of the Financial Code is repealed.

SEC. 45. Section 3828 is added to the Financial Code, to read:

3828. Notwithstanding Section 3824, a foreign (other state) bank that does not maintain offices in California may merge with or purchase the whole business unit of a foreign (other state) bank that already maintains one or more offices in California in accordance with Section 3824 pursuant

to federal law and the law of the domicile of the surviving or purchasing bank. The surviving or purchasing bank may retain the offices established in this state by the disappearing or selling bank. Thereafter, the surviving or purchasing bank may establish and maintain additional offices as if it were the disappearing or selling bank.

SEC. 46. Section 14212 is added to the Financial Code, to read:

14212. (a) The commissioner, whenever in his or her opinion such action is necessary or appropriate to carry out his or her duties, may call a meeting of the board of directors of a credit union.

(b) A meeting of the board of a credit union called by the commissioner shall be held upon four days' notice by first class mail or 24 hours' notice delivered personally or by telephone. The notice shall be given by the commissioner or, if the commissioner so orders, by an officer of the credit union.

(c) A meeting of the board of a credit union called by the commissioner shall be held at the head office of the credit union, the department office closest to the head office of the credit union, or any other place within a reasonable distance to the head office of the credit union as may be designated by the commissioner and specified in the notice of that meeting.

(d) The expenses of the credit union pertaining to a meeting of the board of a credit union called by the commissioner shall be paid by the credit union.

SEC. 47. Section 14250 of the Financial Code is amended to read:

14250. (a) (1) The commissioner may at any time investigate into the affairs and examine the books, accounts, records, files, and any office within or outside of this state used in the business of every credit union, whether it acts or claims to act under or without authority of this division.

(2) The commissioner and the commissioner's duly designated representatives shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of every credit union referred to in paragraph (1).

(3) The officers and employees of every credit union being examined shall exhibit to the examiners, on request, any or all of its securities, books, records, and accounts and shall otherwise cooperate with the examination so far as it may be in their power.

(b) (1) The commissioner shall examine every credit union organized under the laws of this state to the extent and whenever and as often as the commissioner shall deem it advisable, but in no case less than once every two years.

(2) For purposes of this subdivision, an examination made by the commissioner in conjunction with or with assistance from the National Credit Union Administration or a credit union regulatory agency of another state of the United States is deemed to be an examination made by the commissioner.

(3) No provision of this subdivision shall be deemed to require that the commissioner make an examination onsite at the offices of a credit union.

SEC. 48. Section 14313 of the Financial Code is amended to read:

14313. If the commissioner finds that any of the factors set forth in subdivisions (a) to (g), inclusive, are true with respect to a California credit union, the commissioner may by order, without any prior notice or hearing, take possession of the property and business of the California credit union:

(a) That the California credit union has violated any provision of this division, of another applicable law, of any order issued under this division, or of any written agreement with the commissioner, or has committed a material violation of any regulation of the commissioner.

(b) That the California credit union is conducting its business in an unsafe or unsound manner.

(c) That the California credit union is in such condition that it is unsafe or unsound for it to transact credit union business.

(d) That the California credit union has inadequate net worth or is insolvent. The net worth of the credit union shall be considered inadequate if it is less than 2 percent of the credit union's total assets.

(e) That the California credit union failed to pay any of its obligations as they came due or is reasonably expected to be unable to pay its obligations as they come due.

(f) That the California credit union has ceased to transact credit union business.

(g) That the California credit union has, with the approval of its board, requested the commissioner to take possession of its property and business.

SEC. 49. Section 14315 of the Financial Code is amended to read:

14315. (a) On taking possession of the business and assets of any credit union as provided in this chapter, the commissioner may proceed to liquidate the credit union in the manner provided by Article 8 (commencing with Section 305) of Chapter 2 of Division 1, and the provisions of that article, except Sections 325, 325.1, 325.2, and 330, shall apply as if the California credit union were a California state commercial bank, or he or she may appoint a liquidating agent or a liquidating committee of three members of the credit union to liquidate the business and assets of the credit union in the manner provided in Article 2 (commencing with Section 15250) of Chapter 9, except that in lieu of the certificate required under Section 15252 the commissioner shall prepare and file in the office of the Secretary of State a certificate of commencement of liquidation proceedings upon taking possession of the business and assets, and the commissioner or his authorized deputy shall countersign the certificate referred to in Sections 15257 and 15258 whenever liquidation is involuntary. The commissioner may, however, prepare and file a final certificate whenever he or she retains possession of the assets of any credit union for the purpose of liquidation. The liquidating agent need not be a member of the credit union to be liquidated, and may be a person, firm, or corporation as determined by the commissioner.

(b) If the commissioner takes possession of the property and business of a California credit union pursuant to Section 14313, the commissioner may tender to the National Credit Union Administration an appointment as conservator or receiver of the California credit union. If the National Credit Union Administration accepts the appointment, the National Credit Union

Administration shall have, in addition to any powers conferred by federal law, the powers conferred on the commissioner pursuant to subdivision (a).

SEC. 50. Chapter 11 (commencing with Section 31700) of Division 15 of the Financial Code is repealed.